IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 91 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

VIKRANT CRIMPERS - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant
NOTICE SERVED for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 09/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.The Income Tax Appellate Tribunal, Ahmedabad Bench “B” has referred the following question under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax:

> “Whether, in the facts and circumstances of the case, the Tribunal was right in holding that CIT, Surat, was not justified to pass the order under Section 263 of Income Tax Act, 1961 in the case of assessee relating to A.Y. 1986-87?”

2.The assessment year is 1986-87.

3.Heard Mr.T.U.Bhatt, the learned standing counsel for the applicant revenue. Though served, there is no appearance on behalf of the respondent assessee.

4.The facts stated briefly are that the Assessing

Officer had made assessment under Section 143(1) of the Act on 8th March 1988. The Commissioner of Income Tax, being of the view that the said order was erroneous and prejudicial to the interests of the revenue, initiated proceedings under section 263 of the Act. Vide order dated 26th March 1990, the Commissioner of Income Tax held that the assessment order was erroneous and prejudicial to the interests of revenue, and *inter alia*, directed the Assessing Officer to add amount of sales tax benefit of Rs.2,32,961/- to the total income.

5. The assessee carried the matter in appeal before the Tribunal. The Tribunal vide its order dated 8th June 1992 held that the order of CIT under Section 263 of the Act was without jurisdiction, and allowed the appeal.

6. As can be seen from the order of the Tribunal,

the Tribunal has found, as a matter of fact, that the assessment order was framed under Section 143(1) of the Act. That the C.B.D.T. had vide its circular No.RA/86-87/DIT dated 26th August 1987, directed that no remedial action is necessary in summary cases. The Tribunal held that, admittedly, the assessee's case for A.Y. 1986-87 was in the nature of summary assessment, and that, therefore, in view of the directions of the C.B.D.T., the CIT could not have exercised revisional powers under Section 263 of the Act. Nothing has been pointed out to dislodge the aforesaid findings of the Tribunal.

7. The Commissioner of Income Tax, being bound by the directions of the C.B.D.T., could not have exercised powers under Section 263 of the Act in the present case when the assessment in question was in the nature of a summary assessment.

8.The Tribunal was justified in holding that the CIT, Surat was not justified in passing the order under Section 263 of the Act in the case of the assessee in relation to Assessment Year 1986-87. Considering the fact that the Court has taken the view that the exercise of powers under Section 263 of the Act was without jurisdiction, it is not necessary to enter into the merits of the controversy. The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue.

9.The Reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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